

SECOND COMMITTEE

Formulation of main trends

INTRODUCTION

The sole purpose of this informal working paper is to reflect in generally acceptable formulations the main trends which have emerged from the proposals submitted either to the United Nations Sea-Bed Committee or to the Conference itself.

The fact of including these formulations does not imply any opinion on the degree of support they have commanded either in the preparatory stage or in the proceedings of the current session of the Conference. It does not imply either that all the proposals from which these formulations have been taken have been the subject of discussion. The inclusion of a provision in this paper, whether or not only one formula appears, does not necessarily imply that there are no other opinions concerning these questions or that all or most delegations agree on the necessity for such a provision.

All the provisions submitted to the United Nations Sea-Bed Committee and to the Conference are maintained and may be considered by this Committee at any time. Thus, the preparation of this document and its acceptance by the Committee as a working paper in no way signifies that these proposals have been withdrawn. There is no question of taking any decisions at the present stage, in accordance with the method of work adopted by the Committee at its meeting on 3 July, once this task has been carried out, the item will be "frozen" and the Committee will pass on to the next item. No decision has to be taken until all the closely interrelated items have been thoroughly discussed.

Since the purpose of this paper is to focus the discussion of each of the items on the fundamental issues, leaving until later the consideration of supplementary rules and drafting points, the paper does not include all the proposals appearing in volume III of the report of the Sea-Bed Committee or all the variants, many of which reflect only drafting changes, appearing in volume IV of the same report.

On examining this paper consideration should be given to the fact that for some delegations, straits used for international navigation which are a part of the territorial sea of one or more States, fall, except for some specific rules contained in Provision III, under the same legal régime as that of any other portion of the territorial sea. As a result, the position of these delegations is reflected in the provisions corresponding to item 2.4 (innocent passage in the territorial sea) appearing in Informal Working Paper No. 1/Rev.2*, specially in the Provisions XXIV, XXV, XXVI, XXVII, XXVIII, XXIX and Provision XLIII, Formula C.

For certain delegations the question of passage of military aircrafts in transit over straits should not be included in this document nor in a Convention on the Law of the Sea.

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Item 4: Straits used for international navigation

Provision I Definitions

4.1 Innocent passage

Provision II General provision

Provision III High seas within a strait

Provision IV Special duties of coastal States

Provision V Rules applicable to ships with special characteristics

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4.2 Other related matters including the question of the right of transit

Provision VII General

Provision VIII Rules for transit

Provision IX Se lanes and traffic separation schemes

Provision X Non-suspension of transit

Provision XI Sovereign rights of coastal States

Provision XII Competence of straits States to enact regulations

Provision XIII-XV Liability for damage

Provision XVI Existing international arrangements for particular straits

Provision XVII Co-operation between user States and straits States

Definitions

PROVISION I

Formula A

1. This article applies to any strait or other stretch of water, whatever its geographical name, which:
 - (a) is used for international navigation;
 - (b) connects two parts of the high seas.
2. "Straits State" means any State bordering a strait to which these provisions apply.

Formula B

This article applies to any strait or other stretch of water, whatever its geographical name, which:

- (a) is used for international navigation;
- (b) connects:
 - (i) two parts of the high seas; and
 - (ii) the high seas with the territorial sea in one or more foreign States.

Formula C

These articles apply to any strait which is used for international navigation and forms part of the territorial sea of one or more States.

Formula D

An international strait is a natural passage between land formations which:

- (a) (i) lies within the territorial sea of one or more States at any point in its length and
- (ii) joins ...
- (b) has traditionally been used for international navigation.

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4.1 Innocent passage

PROVISION II

Formula A

Subject to the provisions of article ... [Provision III, special duties of coastal States] the passage of foreign ships through straits shall be governed by the rules contained in Part ... [see Provisions XXV to XXVII, XXX to XXXIII and XXXVII to XLI of Informal Working Paper No. 2/Rev.2].

Formula B

1. The provisions [under item 2.4] apply to straits used for international navigation not wider than six miles between the baselines.
2. There shall be no suspension of innocent passage of foreign ships through such straits.

Formula C

In the case of straits leading from the high seas to the territorial sea of one or more foreign States and used for international navigation, the principle of innocent passage for all ships shall apply and this passage shall not be suspended.

Formula D

A strait lying within the territorial sea, whether or not it is frequently used for international navigation, forms an inseparable part of the territorial sea of the coastal State.

Formula E

1. In straits used for international navigation between one part of the high seas and another part of the high seas or between one part of the high seas and the territorial sea of a foreign State, other than those straits in which the régime of transit passage applies in accordance with article ..., the régime of innocent passage in accordance with the provisions of ... shall apply, subject to the provisions of this article.
2. There shall be no suspension of the innocent passage of foreign ships through such straits.
3. The provision of article ... (sealanes) shall apply in such straits.

PROVISION III

Nothing in this Chapter shall affect any areas of high seas within a strait.

PROVISION IV

1. Passage of foreign merchant ships through straits shall be presumed to be innocent.
2. There shall be no suspension of innocent passage of foreign ships through such straits.
3. The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea in straits and shall make every effort to ensure speedy and expeditious passage; in particular it shall not discriminate, in form or in fact, against the ships of any particular State or against ships carrying cargoes or passengers to, from and on behalf of any particular State.
4. The coastal State shall not place in navigational channels in a strait facilities, structures or devices of any kind which could hamper or obstruct the passage of ships through such strait. The coastal State is required to give appropriate publicity to any obstacle or danger to navigation, of which it has knowledge, within the strait.

PROVISION V

(See Formula B, Provision XXXV, of Informal Working Paper No. 1/Rev.2*.)

PROVISION VI

(See Provisions XLIII and XLIV of Informal Working Paper No. 1/Rev.2*.)

- 4.2 Other related matters including the question of the right of transit

PROVISION VII

Formula A

1. In straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State, all ships and aircraft in transit, shall enjoy the same freedom of navigation and overflight, for the purpose of transit through and over such straits, as they have on the high seas. Coastal States may designate corridors suitable for transit by all ships and aircraft through and over such straits. In the case of straits where particular channels of navigation are customarily employed by ships in transit, the corridors, so far as ships are concerned, shall include such channels.
2. The provisions of this article shall not affect Conventions or other international agreements already in force specifically relating to particular straits.

Formula B

1. In straits to which this article applies, all ships and aircraft enjoy the right of transit passage, which shall not be impeded.
2. Transit passage is the exercise in accordance with the provisions of this Chapter of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas and another part of the high seas.

3. ... (see Provision I, Formula A above.)
4. Transit passage shall apply in a strait only to the extent that:
 - (a) an equally suitable high seas route does not exist through the strait; or
 - (b) if the strait is formed by an island of the coastal State, an equally suitable high seas passage does not exist seaward of the island.

Formula C

1. In straits used for international navigation between one part of the high seas and another part of the high seas, all ships in transit shall enjoy the equal freedom of navigation for the purpose of transit passage through such straits.
2. In the case of straits over which the air space is traditionally used for transit flights by foreign aircraft between one part of the high seas and another part of the high seas, all aircraft shall enjoy equal freedom of transit overflight over such straits

Formula D

1. ... (same as Formula B, para. 1)
2. ... (same as Formula B, para. 2)
3. This article applies to any strait or other stretch of water which is more than six miles wide between the baselines, whatever its geographical name, which:
 - (a) is used for international navigation;
 - (b) connects two parts of the high seas.
4. ... (same as Formula B, para. 4)

PROVISION VIII

Formula A

1. Ships and aircraft, while exercising the right of transit passage shall:
 - (a) proceed without delay through the strait and shall not engage in any activities other than those incident to their normal modes of transit;
 - (b) refrain from any threat or use of force in violation of the Charter of the United Nations against the territorial integrity or political independence of an adjacent straits State.
2. Ships in transit shall:

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(a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;

(b) comply with generally accepted international regulations, procedures and practices for the prevention and control of pollution from ships.

3. Aircraft in transit shall:

(a) observe Rules of the Air established by the International Civil Aviation Organization under the Chicago Convention as they apply to civil aircraft; State aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;

(b) at all times monitor the radio frequency assigned by the appropriate internationally designated air traffic control authority or the appropriate international distress radio frequency.

Formula B

1. The freedom of navigation provided for in this article for the purpose of transit passage through straits shall be exercised in accordance with the following rules:

(a) Ships in transit through the straits shall not cause any threat to the security of the coastal States of the straits, or to their territorial inviolability or political independence. Warships in transit through such straits shall not in the area of the straits engage in any exercises or gunfire, use weapons of any kind, launch or land their aircraft, undertake hydrographical work or engage in other similar acts unrelated to the transit. In the event of any accidents, unforeseen stops in the straits or any acts rendered necessary by force majeure, all ships shall inform the coastal States of the straits;

(b) Ships in transit through the straits shall strictly comply with the international rules concerning the prevention of collisions between ships or other accidents;

(c) Ships in transit through the straits shall take all precautionary measures to avoid causing pollution of the waters and coasts of the straits, or any other kind of damage to the coastal States of the straits. Super-tankers in transit through the straits shall take special precautionary measures to ensure the safety of navigation and to avoid causing pollution.

2. The freedom of transit overflight by aircraft over the straits, as provided for in this [Chapter] shall be exercised in accordance with the following rules:

(a) Overflying aircraft shall take the necessary steps to keep within the boundaries of the corridors and at the altitude designated by the coastal State for flights over the straits, and to avoid overflying the land territory of a coastal State unless such overflight is provided for by the delimitation of the corridor designated by the coastal State;

(b) Overflying aircraft shall not cause any threat to the security of the coastal States, their territorial inviolability or political independence; in particular military aircraft shall not in the area of the straits engage in any exercises or gunfire, use weapons of any kind, take aerial photographs, circle or dive down towards ships, take on fuel or engage in other similar acts unrelated to overflight.

PROVISION IX

Formula A

1. In conformity with this [Chapter], a straits State may designate sealanes and prescribe traffic separation schemes for navigation in the straits where necessary to promote the safe passage of ships.
2. A straits State may, when circumstances require and after giving due publicity to its decision, substitute other sealanes or traffic separation schemes for any previously designated or prescribed by it.
3. Before designating sealanes or prescribing traffic separation schemes, a straits State shall refer proposals to the competent international organization and shall designate such sealanes or prescribe such separation schemes only as approved by that organization.
4. The straits State shall clearly indicate all sealanes and separation schemes designated or prescribed by it on charts to which due publicity shall be given.
5. Ships in transit shall respect applicable sealanes and separation schemes established in accordance with this article.

Formula B

1. In the case of narrow straits or straits where such provision is necessary to ensure the safety of navigation, coastal States may designate corridors suitable for transit by all ships through such straits. In the case of straits where particular channels of navigations are customarily employed by ships in transit, the corridors shall include such channels. In the case of any change of such corridors, the coastal State shall give notification of this to all other States in advance.
2. In all straits where there is heavy traffic, the coastal State may, on the basis of recommendations by the Inter-Governmental Maritime Consultative Organization, designate a two-way traffic separation governing passage, with a clearly indicated dividing line. All ships shall observe the established order of traffic and the dividing line. They shall also avoid making unnecessary manoeuvres.
3. Coastal States may designate special air corridors suitable for overflight by aircraft, and special altitudes for aircraft flying in different directions, and may establish particulars for radio communication with them.

PROVISION X

Formula A

A straits State shall not hamper transit passage and shall give appropriate publicity to any danger to navigation or overflight within or over the strait of which it has knowledge. There shall be no suspension of transit passage.

Formula B

1. No State shall be entitled to interrupt or suspend the transit of ships through the straits or engage therein in any acts which interfere with the transit of ships, or require ships in transit to stop or communicate information of any kind.
2. The coastal State shall not place in the straits any installations which could interfere with or hinder the transit of ships.
3. No State shall be entitled to interrupt or suspend the transit overflight of aircraft, in accordance with this article, in the air space over the straits.

PROVISION XI

The provisions of this [Chapter] shall not affect the sovereign rights of the coastal States with respect to the surface, the sea-bed and the living and mineral resources of the straits.

PROVISION XII

1. Subject to the provisions of this article, a straits State may make laws and regulations:
 - (a) in conformity with the provisions of article ... above;
 - (b) giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the straits.
2. Such laws and regulations shall not discriminate in form or fact among foreign ships.
3. The straits State shall give due publicity to all such laws and regulations.
4. Foreign ships exercising the right of transit passage shall comply with such laws and regulations of the straits State.
5. If a ship entitled to sovereign immunity does not comply with any such laws or regulations and damage to the straits State results, the flag State shall in accordance with article ... be responsible for any such damage caused to the straits State.

PROVISION XIII

Formula A

Responsibility for any damage caused to a straits State resulting from acts in contravention of this [Chapter] by any ship or aircraft entitled to sovereign immunity shall be borne by the flag State.

Formula B

Liability for any damage which may be caused to the coastal States of the straits, their citizens or juridical persons by the ship in transit, shall rest with the owner of the ship or other person liable for the damage, and in the event that such compensation is not paid by them for such damage, with the flag State of the ship.

PROVISION XIV

If a straits State acts in a manner contrary to the provisions of this [Chapter] and loss or damage to a foreign ship or aircraft results, the straits State shall compensate the owners of the vessel or aircraft for that loss or damage.

PROVISION XV

Liability for any damage which may be caused to the coastal States of the straits or their citizens or juridical persons by the aircraft overflying the straits shall rest with the owner of the aircraft or other person liable for the damage and in the event that compensation is not paid by them for such damage, with the State in which the aircraft is registered.

PROVISION XVI

Formula A

The provisions of this [Chapter] shall not affect the legal régimes of straits through and over which transit and overflight are regulated by international agreements, specifically relating to such straits.

Formula B

The provisions of this Chapter shall not affect obligations under the Charter of the United Nations or under conventions or other international agreements already in force relating to a particular strait.

PROVISION XVII

User States and straits States should by agreement co-operate in the establishment and maintenance in a strait of necessary navigation and safety aids or other improvements in aid of international navigation or for the prevention and control of pollution from ships.